

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

13                    This is an action on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254,  
14 brought by a Nevada Prisoner. The petition was denied on its merits and the Court declined to issue  
15 a certificate of appealability. Thereafter, petitioner moved for reconsideration of petition's merits,  
16 which was denied. Petitioner appealed and the Ninth Circuit Court of Appeals has remanded the  
17 matter for the Court to consider issuance of a certificate of appealability on the motion for relief from  
18 judgment. *See* ECF No. 47.

Petitioner's motion for relief from judgment offered a fallacious argument that respondents had committed fraud on the court by misrepresenting the record. His argument was rebutted by respondents with documentation supporting their factual contentions. The motion was denied.

25 V. Certificate of Appealability

24 To pursue the appeal in this matter, petitioner must receive a certificate of  
25 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup> Cir. R. 22-1; *Allen v. Ornoski*, 435  
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1 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir.  
2 2001). Generally, a petitioner must make “a substantial showing of the denial of a constitutional  
3 right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529  
4 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the  
5 district court’s assessment of the constitutional claims debatable or wrong.” *Id.* (*quoting Slack*, 529  
6 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating  
7 that the issues are debatable among jurists of reason; that a court could resolve the issues differently;  
8 or that the questions are adequate to deserve encouragement to proceed further. *Id.*

9 Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing  
10 Section 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in  
11 the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a  
12 notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has  
13 considered the issue raised by petitioner, with respect to whether it satisfies the standard for issuance  
14 of a certificate of appealability, and determines that it does not meet that standard. The Court will  
15 therefore deny petitioner a certificate of appealability.

16 **IT IS THEREFORE ORDERED** that no Certificate of Appealability shall issue as  
17 to the Motion for Relief From Judgment .

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19 Dated this 26th day of July, 2011.

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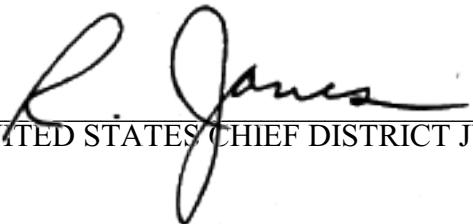
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R. Jones  
UNITED STATES CHIEF DISTRICT JUDGE